

## Consumer Product Safety Commission

## § 1025.72

other substantiation for any expenses claimed.

(d) *When an application may be filed.*

(1) An application may be filed whenever the applicant has prevailed in a proceeding covered by this subpart or in a significant and discrete substantive portion of the proceeding. However, an application must be filed no later than 30 days after the Commission's final disposition of such a proceeding.

(2) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(4) For purposes of this subpart, final disposition means the later of:

(i) The date on which an initial decision by the presiding officer becomes final, *see* 16 CFR 1025.52;

(ii) The date on which the Commission issues a final decision (*See* 16 CFR 1025.55);

(iii) The date on which the Commission issues an order disposing of any petitions for reconsideration of the Commission's final order in the proceeding (*See* 16 CFR 1025.56; or

(iv) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

(e) *Where an application must be filed.*

The application for award and expenses must be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 in accordance with the application requirements of this section.

### § 1025.72 Procedures for considering applications.

(a) *Filing and service of documents.*

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as provided in the Com-

mission's Rules of Practice, 16 CFR 1025.11–1025.19.

(b) *Answer to application.* (1) Within 30 days after service of an application for an award of fees and expenses, complaint counsel in the underlying administrative proceeding upon which the application is based may file an answer to the application. Unless complaint counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(2) If complaint counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by complaint counsel and the applicant.

(3) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of Commission counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, complaint counsel shall include with the answer either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Reply.* Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(d) *Comments by other parties.* Any party to a proceeding other than the applicant and complaint counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit

full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and complaint counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure (See 16 CFR 1115.20(b), 1118.20, 1025.26, and 1605.3). If a prevailing party and complaint counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or complaint counsel, or on his or her own initiative, the presiding officer may order further proceedings. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(2) A request that the presiding officer order further proceedings under this paragraph shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Initial decision.* The presiding officer shall endeavor to issue an initial decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the complaint counsel's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision of this Commission will only address the allocable portion for

which this Commission is responsible to the eligible prevailing party.

(h) *Agency review.* (1) Either the applicant or complaint counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with 16 CFR 1025.54, 1025.55 and 1025.56.

(2) If neither the applicant nor Commission complaint counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued.

(3) If an appeal from or review of an initial decision under this subpart is taken, the Commission shall endeavor to issue a decision on the application within 90 days after the filing of all briefs or after receipt of transcripts of the oral argument, whichever is later, or remand the application to the presiding officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* An applicant seeking payment of an award shall submit to the Secretary of the Commission a copy of the Commission's final decision granting the award, accompanied by a verified statement that the applicant will not seek review of the decision in the United States courts. (Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.) The Commission will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding. Comments and accompanying material may be seen in or copies obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, during working hours Monday through Friday.

#### APPENDIX I TO PART 1025—SUGGESTED FORM OF FINAL PREHEARING ORDER

##### *Case Caption*

A final prehearing conference was held in this matter, pursuant to Rule 21 of the Commission's Rules of Practice for Adjudicative